

## **REMARKS**

### **Status of Claims**

Claims 79-81 and 83-88 are present and active in the application.

The present invention relates to compositions employed in the home for laundering clothing and fabrics. In particular, these compositions represent novel formulations for home laundering of a fabric load using a wash liquor that comprises a combination of a substantially inert, non-reactive working fluid and at least one washing additive. Because the working fluid is substantially inert and non-reactive (*i.e.*, it displays no deterative properties), the washing additive represents the actual cleaning agent of the wash liquor. The washing additive may comprise a co-solvent, a performance enhancer, or both, wherein the co-solvent and performance enhancer each has deterative properties that are required to remove particulates, film soils, and stains from the fabric or that assist in the removal of particulates, film soils, and stains from the fabric. The sole purpose of the working fluid is to provide a medium wherein the co-solvents, performance enhancers, and other additives are brought together in a multi-phase mixture to promote cleaning of the clothing and fabrics. (*See* Specification at page 1, ll. 1-20 and page 11, ll. 1-18.)

### **Claim Rejections - 35 USC § 102**

Claims 79-81 and 83-87 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,116,426 to Asano ("the '426 patent"). The Examiner's reasons for maintaining these rejections changed between the issuance of the Official Actions dated July 14, 2004 and November 29, 2004, and included mischaracterizations of Applicants' arguments for traversal of the rejections. Applicants respectfully submit that the Official Action dated November 29, 2004 made Final is premature and that the rejections cannot be sustained.

In paragraphs 5 and 10 of the Official Action dated November 29, 2004, the Examiner states that he "has found a reference [Asano] teaching hydrofluoroethers in combination with perfumes." In paragraph 6 of the Official Action dated July 14, 2004, the Examiner implies that Asano teaches that a dichloropentafluoropropane as a cleaning solvent is equivalent to a "working fluid." The Examiner reaches the erroneous conclusion that Asano anticipates the instant invention as claimed based upon two fundamental errors. First, the Examiner assumes that Asano's "cleaning solvent" is equivalent to Applicants' "working fluid." Second, the Examiner assumes that hydrofluoroethers are functionally equivalent to

dichloropentafluoropropanes. Applicants respectfully maintain that both of these assumptions are not correct and that Asano does not teach, motivate, or suggest the instant invention as claimed.

Applicants note that the Examiner has never asserted that Asano uses, teaches, nor suggests the concept of “working fluid” as Applicants define that term in their Specification. Applicants define a “working fluid” with clear and unequivocal language: a working fluid is “a fluid that possess no deterative properties” and a compound or fluid that has “deterative action” is one “that is required to remove particulates, film soils, and stains or that assist in the removal of particulates, film soils, and stains.” See Specification at page 11, ll. 2-4, 8-10, and 13-18. Furthermore, Applicants characterize cleaning solvents as being different from the working fluid of their invention: “a solvent that is different from the IWF [working fluid] in that its sole purpose is to provide deterative properties not met by the performance enhancers will hereinafter be referred to as a co-solvent.” *Id.* at page 11, ll. 13-15.

At best, Asano’s “cleaning solvent” would represent a “co-solvent” of Applicant’s invention, which, according to Applicants’ definition, is not a “working fluid.” However, the Examiner erroneously reads “working fluid” into the Asano reference based upon a mischaracterization of the language of the Applicants’ Specification and then forces a strained equivalence between Asano’s “cleaning solvent” and Applicants’ “working fluid.” This combination of errors allows the Examiner to arrive at the erroneous conclusion that the Asano reference anticipates the claims of the instant application.

Applicants also emphasize that Asano never teaches or suggests the use of hydrofluoroethers as a cleaning solvent, as a working fluid, or as any component used in conjunction with the method of cleaning a substrate using dichloropentafluoropropanes. Applicants further maintain that hydrofluoroethers and dichloropentafluoropropanes are such structurally and functionally distinct chemicals that nobody of ordinary skill in the art would read Asano’s Specification as teaching that these compounds can serve the identical function as a “working fluid” of Applicants’ Specification. However, the Examiner incorrectly finds an equivalence between dichloropentafluoropropanes—which is disclosed by the Asano reference, with hydrofluoroethers—which are not disclosed by the Asano reference, to arrive at the erroneous conclusion that Asano anticipates Applicants’ invention as claimed.

Applicants respectfully maintain that the Examiner’s conclusion that the Asano reference anticipates the instant invention as claimed cannot be sustained because Asano’s “cleaning

solvent” is not equivalent to Applicants’ “working fluid” and that Asano’s dichloropentafluoropropanes are not functionally equivalent to Applicants’ hydrofluoroether.

In paragraph 6 of the Official Action dated November 29, 2004, the Examiner incorrectly asserts that the Applicants state in their Response to the Official Action dated July 14, 2004 “that Asano teaches the hydrofluoroether as a solvent and not a working fluid.” This is a mischaracterization of Applicants’ Responses to the Official Action dated July 14, 2004. Nowhere in their Responses dated either August 18, 2004 or September 27, 2004 do Applicants state that Asano teaches anything with respect to the use of hydrofluoroethers in any connection with a method of cleaning a substrate using a dichloropentafluoropropane. The Applicants stated in their Response dated August 18, 2004 that the dichloropentafluoropropanes of Asano were cleaning solvents because they were the actual agents that clean the fabrics (*i.e.*, they display detergent properties). Furthermore, Applicants stated that Asano’s “cleaning solvent” differs from the Applicants’ “working fluid” because Applicants’ “working fluid” does not possess detergent (cleaning) properties. Thus, the Examiner rejects the claims without a substantive foundation or reason.

In paragraph 6 of the Official Action dated November 29, 2004, the Examiner rejects Applicants’ definition of a working fluid as being “non-reactive” to mean that the working fluid does not clean or coat the substrate, because “this is not a definition used in chemistry.” Thereafter, the Examiner proffers his own definition of “cleaning” as one that “is not a chemical reaction but a process of solvation.” Having created his own definition of “cleaning,” the Examiner ignores the Applicants’ Specification wherein the Applicants carefully chose to define “non-reactive” in the context of a working fluid, and finds the Asano reference to teach cleaning solvents as being “non-reactive.” This examination practice is clearly improper.

An applicant is entitled to be his or her own lexicographer and may rebut the presumption that claim terms are to be given their ordinary and customary meaning by clearly setting forth a definition of the term that is different from its ordinary and customary meaning(s). *See In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994) and MPEP § 2111.01. Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. *Toro Co. v. White Consolidated Indus. Inc.*, 199 F.3d 1295, 1301 (Fed. Cir. 1999). Any special meaning assigned to a term “must be sufficiently clear in the specification that any departure from common usage would also be so understood by a person of

experience in the field of the invention.” *Multiform Desiccants Inc. v. Medzam Ltd.*, 133 F.3d 1473, 1477 (Fed. Cir. 1988). See also MPEP § 2173.05(a).

Here, Applicants unambiguously defined “substantially non-reactive” as it modifies a working fluid and components thereof to mean “a non-solvent, non-deterative fluid that under ordinary or normal washing conditions, *e.g.*, at pressures of -1 to 50 atmospheres and temperatures of from about 10° to about 45° C, does not appreciably react with fibers of the fabric load being cleaned, the stains and soils on the fabric load, or the washing additives combined with the component to form the wash liquor.” See Specification at page 1, lines 9-15. A person of experience in the field would readily understand that this definition indicates that a non-reactive working fluid does not react with fabric fibers nor with stains and soils on the fabric. Therefore, a non-reactive working fluid, by definition, cannot perform any process that disrupts the chemical interaction between stains and soils on fabric fibers, including the Examiner’s suggested solvation process.<sup>1</sup>

Applicants assert that a person of experience in this field would understand that impurities (*e.g.*, stains and soils) on fabric fibers are maintained largely by virtue of a variety of chemical forces, including: chemical bonds such as hydrogen bonds, ionic bonds, and covalent bonds (*e.g.*, Schiff base formation between an amine and a ketone group) as well as electrostatic, hydrophobic, hydrophilic, and Van der Waals interactions. The ordinary definition of “cleaning” as applied to a fabric substrate is a process for the removal of particulates, film soils, and stains from a fabric substrate. Thus, cleaning disrupts the chemical forces that maintain impurities on fabric fibers, which includes chemically reacting with the interaction between the impurity and the fabric substrate in order to destroy the chemical forces that retain the impurity on the fabric substrate. The process of cleaning therefore goes well beyond that which the Examiner defines merely as a “process of solvation” and includes chemical reactions.

By Applicants’ carefully chosen and unambiguous language, a non-reactive working fluid is neither a cleaning solvent (*i.e.*, a solvent with deterative action) nor a chemically reactive solution, as it is used in the instant Specification. And this meaning would be readily understood

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<sup>1</sup> Solvation would liberate only impurities that are physically trapped within the interstitial spaces of a fabric weave pattern. Most impurities and stains, however, are bonded to fabrics through chemical interactions. Nevertheless, the Applicants’ Specification clearly states that a non-reactive working fluid does not interact with stains or soils on the fabric load. See Specification at page 1, ll. 9-15. Thus, Applicants’ “working fluid” lacks solvation activity as well. This further distinguishes Asano’s cleaning solvents from Applicants’ working fluids.

by a person of experience in the field reading the Applicants' Specification and Claims. Therefore, Asano's cleaning solvents do not read upon working fluid, and the Asano reference does not anticipate of the Applicants' invention as claimed.

In paragraphs 7 and 9, the Examiner states that the compositions of Asano exist in a non-reactive form prior to use and that the Applicants cannot rely on the intended use of the composition to demonstrate novelty. The Examiner concludes that merely because the compositions of Asano are non-reactive prior to use, they anticipate the Applicants' claims. These arguments must fail because Asano's compositions do not teach or suggest the instant invention as claimed.

Independent claim 79 is drawn generally to a substantially non-reactive, non-aqueous, non-oleophilic, apolar working fluid and at least one washing additive comprising a fragrance, and independent claim 86 is drawn generally to a non-reactive working fluid, a fragrance, and at least two washing additives. The Examiner has never asserted that Asano teaches or suggests a composition that contains a "substantially non-reactive, non-aqueous, non-oleophilic, apolar working fluid," let alone a substantially non-reactive working fluid in combination with at least one washing additive. Therefore, the Examiner has simply failed to meet the burden of showing that the Asano reference meets every limitation of the Applicants' invention as claimed.

In paragraph 8 of the Official Action dated November 29, 2004, the Examiner asks for clarification of the Applicants' position that "Asano teaches that his fluid is a solvent, which is precisely what the inert working fluid is claimed not to be." The Examiner states: "It is unclear to the examiner how the applicant's claimed hydrofluoroether does not meet the criteria for solvent. How can the instant hydrofluoroether not be a solvent whereas the prior art hydrofluoroether is clearly a solvent." [sic] Within this paragraph of the Official Action lies a very fundamental point of confusion held generally by the Examiner during his review of the instant claims with respect to the teachings of Asano. The Applicants respectfully offer the following explanation to assist the Examiner with clarification of this confusion.

It is not a question of whether the hydrofluoroether is a solvent, but whether the hydrofluoroether serves the function of a cleaning agent. As stated previously in this Response, Applicants' Specification clearly distinguishes a "working fluid," which has no detergent properties, from additional washing additives (*e.g.*, co-solvents and performance enhancers) that display detergent properties (*i.e.*, cleaning properties). *See* Specification at page 11, ll. 1-19. Asano teaches that dichloropentafluoropropanes are solvents that act as cleaning agents. Asano

does not teach that hydrofluoroethers are solvents that act as cleaning agents. Applicants' Specification teaches that hydrofluoroethers can be used as "working fluids" in the present invention. *See* Specification at page 19, ll. 8-11. By Applicants' definition of "working fluid" being substantially inert, non-reactive, and lacking deterative properties, hydrofluoroethers would be substantially inert, non-reactive, and lack deterative properties. By contrast, Asano's cleaning solvents (dichloropentafluoropropanes) possess deterative properties, which means that Asano's cleaning solvents cannot serve the function of substantially inert, non-reactive "working fluids." This lack of functional identity or equivalence between Asano's cleaning solvents and the Applicant's "working fluids" establishes that the Applicants' claims are novel and patentably distinct from the teachings of Asano.

Applicants respectfully request that the rejections under § 102 in view of Asano be withdrawn in light of these arguments.

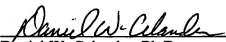
#### **Allowable Subject Matter**

Applicants gratefully acknowledge the Examiner's determination that independent claim 88 is allowable subject matter for the reasons set forth in the Official Action dated July 14, 2004.

Applicants submit that all pending claims of the present application are in condition for allowance. Early notice of such action is earnestly solicited.

Respectfully submitted,

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